IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO 4262 OF 1992

Shri Vamanrao Vishwanath Falke,
Occupation-Business,
residing at 331, Jyoti Society, .. Petitioner
Shankarnagar, Pune- 411 009. Orig. Plff.

Versus

1. Smt. Anusaya Rangrao Patil
   Occupation-Household,
   residing at 331, Jyoti Society,
   Shankarnagar, Pune 411009.

2. Shri shivaji Rangrao Patil,
   Occupation- service,
   Residing at Veer Savarakar
   Nagars, Shankarnagar,
   Pune- 411009.

3. Shri Mohan Rangrao Patil,
   Occupation-service,
   residing at as No.1.

4. Shri Subhash Rangrao Patil,
   Occupation service, .. Respondents,
   residing at as No.1. Orig.Defts.

Mr.V.B. Rajure for the petitioner.
None for the respondents.

CORAM : ANOOP V.MOHTA J.

DATE : 19TH JULY, 2005.

ORAL JUDGMENT

. The writ petition is filed by the original plaintiff and challenges the judgment and order passed

by the Additional District Judge, Pune, (appellate Court) dated 4/2/1992, whereby, the respondents'appeal was allowed and the judgment and decree passed by the learned II Additional Judge, Small Causes Court, Pune, (trial Court), dated 11/7/1986 in R.C.S. No. 20/1981 r/w M.A.No. 771/1980 was set aside. In the result suit filed by the petitioners-landlord was dismissed.

2. The premises in question consists of two rooms, admeasuring 10' X 12", situated House No.331 at Peth Parvati Sahakar No.1. The petitioner being owner preferred the present suit for recovery of the possession of the premises in question on the foundation that, the father of the respondents, 2 to 4 and the husband of the respondent No.1, was the original tenant of the suit premises on a monthly rent of Rs. 75/- plus other charges. The original tenant expired in the year 1977, since then the respondents have been occupying the suit premises in the capacity, as legal heirs of the deceased tenant. The rents were not paid regularly, including the other charges. They were in arrears of rent. It is also alleged that the respondents have caused nuisance and they have also acquired the alternate accommodation for their residence at Dashbhuja

Ganpati. The notice was served on them dated 13/8/1980. Based upon the same, the present suit was filed. The same was resisted by filing Written statement. The contentions were denied. The Misc. Application No. 771/1980 for the fixation of standard rent was also filed. The learned trial Judge after considering both the matters and going through the documents on the record, held that the petitioner proved that the original defendants-respondents have acquired alternative suitable accommodation for their residence and they are in arrears of rent. Therefore, decree was passed. The same was reversed by the appellate Court by allowing the appeal filed by the tenant and dismissed the suit.

3. Heard the learned Counsel Mr. Rajure, appearing for the petitioner. I have noted the submissions made in the matter. None appeared for the respondents, though served.

4. The provisions of section 5 (1)(c) of the Bombay Rents Hotel Lodging House Rates Control Act, 1947 (for short Bombay Rent Act), made it very clear that the respondents being legal heirs of the original tenants

are entitled to claim protection available under the Act, as at the relevant time they were in occupation of the said premises. The question in the present case is that the original defendant No.2 has acquired accommodation and therefore, on that ground, the decree for possession, as sought was granted by the trial Court. There is no merit to justify the case of the petitioner that the acquisition of the premises by one of the heirs of the tenant, and in the present case, the defendant No.2, that itself is sufficient to consider the case, which falls within the ambit of "acquisition of suitable accommodation". Out of 4 legal heirs of the original-tenant, even if, one heir acquires alternative or suitable accommodation, still in my view, that itself is not sufficient to grant decree against all the occupant/tenants on the foundation of acquisition of suitable accommodation. An acquisition of any accommodation for independent residence, by one of the heirs or relatives cannot be the ground for eviction of other tenants under clause 13(1)(l) of the Bombay Rent Act. The Bombay High Court in (**1984 Mh.L.J. 834) Shankar Nana Waychal and others Vs. Mohan Ganesh Date and another**, has observed as under:

> "The acquisition of a suitable residence must necessarily be by the tenant and not any other person who is related to the tenant. In the instant case, if accommodation has been acquired by the sons of the tenant, that cannot be made a ground for evicting the tenant under section 13(1) (1) of the Bombay Rent Act".

From all these cases, one thing is very clear that "suitable accommodation" must means that all the occupants heirs of the original tenant must be in a position and or have the right to occupy the said accommodation. In the present case, there is no such case made out except in reference to the defendant No.2. There is also a material on the record that the premises acquired by defendant No.2 is in the name of his wife. In this background, the landlord cannot insist that all the legal heirs of the original tenant have right to occupy the said accommodation, as acquired by the defendant No.2. Considering this, I am of the view that the appellate Court is right in dismissing the suit filed by the petitioner landlord.

5. There is no case made out on any other ground.

6. For the above reason, the petition is dismissed. Rule discharged. No order as to cost.

[ANOOP V. MOHTA, J.]